

REMARKS

Status of the Application

Claims 1-51 are all the claims pending in the Application. Claims 1-9, 15-17, 26-34, 40-42 and 51 have been rejected under 35 U.S.C. § 103(a). Claim 17 has been rejected under 35 U.S.C. § 112, second paragraph. Claims 10-14, 18-25, 35-39 and 43-50 would be allowable if rewritten in independent form, but are currently objected to as being dependent on a rejected base claim.

Amendments to the Claims

Claims 1, 2, 3, 6, 15, 17, 20, 26, 40-44, and 47-49 have been amended. Applicant submits that the claims have been amended for clarity, are fully supported throughout the Specification as filed, and no new matter has been added. For example, support for the amendments to independent claims 1, 15, 26 and 40 can be found in the fourth full paragraph of page 2 of the Specification as filed. All amendments to the dependent claims were made for clarity and to ensure proper antecedent basis.

Objection to the Specification

The Specification has been objected to as allegedly failing to provide proper antecedent basis for the recitations of claim 42. Applicant respectfully disagrees. As currently amended, claim 42 recites (in part):

... in which said scanning means comprise said camera for scanning said patient data on said packs in a mirror image.

As stated in the grounds of rejection, paragraph [0048] of the publication of the present Application states, “This makes it possible to scan the patient data by means of camera 2. The mirror image obtained in this way may be reversed electronically if desired.” Applicant submits that this disclosure clearly provides antecedent basis for the recitations of claim 42.

Claim Objections

Claims 10-14, 18-25, 35-39 and 43-50 would be allowable if rewritten in independent form, but are currently objected to as being dependent on a rejected base claim. Applicant submits that independent claims 1, 15, 26 and 40 will be shown to be allowable by the arguments presented below, and therefore, Applicant respectfully declines the invitation to rewrite the claims, at this time.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 17 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly failing to particularly point out and distinctly claim the subject matter the Applicant regards as the invention. Without conceding the rejection, Applicant has amended claim 17 as set forth above, and respectfully requests that the rejection be lifted.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-8, 15-16, 26-33, 40-41 and 51 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious in light of U.S. Publication 2002/0099467 to Sleep et al. (hereinafter Sleep) in view of U.S. Publication 2003/0200726 to Rast (hereinafter Rast). Applicant respectfully submits that the combination fails to disclose all the recited features of the above listed claims.

As currently amended, claim 1 recites in part:

optical scanning said drugs in said packs and said patient data on said strings to read scanned patient and drug data and to produce an image of said packs and at least some of the patient data;
- entering into memory the scanned patient and drug data and the image of said packs and at least some of the patient data;
- comparing said scanned drug data with said input drug data;
- accepting or rejecting said drugs;
wherein said stored image is maintained as proof of the state of the packs at the time of inspection.

(emphasis added)

Scanning “said drugs in said packs and said patient data on said strings”

First, Applicant submits that the above combination of Sleep and Rast fails to disclose “optical scanning said drugs in said packs” as required by claim 1. It is argued in the “Response to Arguments” in the most recent Office Action that the Examiner failed to see where the claims required the drugs be scanned while in packs, or that the comparing and accepting or rejecting of the present application was done on packed drugs. Without conceding this argument, Applicant submits that claim 1, as currently amended, specifically requires “optical scanning said drugs in said packs.” Furthermore, neither Sleep nor Rast provides scanning of drugs in packs.

Beginning with Sleep, the grounds of rejection allege that the present Application’s recitation of “optical scanning said drugs in said packs” is disclosed in paragraph [0053] of Sleep. Yet, an examination of Sleep proves that any scanning that could possibly take place would be prior to any drugs being “in said packs.” For example, paragraph [0053] of Sleep states that tablets are fed from a hopper to a conveyor belt, the tablets are inspected, and only after inspection are the tablets entered into a bottle. In fact, one reason for this inspection in

Sleep is to determine if the tablet should move on to bottling. Clearly, the inspection of Sleep takes place prior to any packaging. Second, an examination of U.S. Patent 5,522,512, referenced in paragraph [0053] of Sleep, proves the scanning takes place on individual pills not in packs. In patent 5,522,512 the camera is upstream from any packaging, and tablets are scanned outside of any possible package.

Moving to Rast, this reference explicitly states that “doses can be checked prior to packaging.” (Rast, ¶[0116]). So, just as with Sleep, Rast cannot possibly disclose “scanning said drugs in said packs.” Because both Sleep and Rast only teach scanning of drugs prior to packaging, the references, individually and in combination, fail to disclose the above recitation of “optical scanning said drugs in said pack.”

Additionally, because Sleep and Rast both scan only tablets or medications and supplements, respectively, neither discloses the optical scanning of patient data on said strings. For example, Rast’s paragraph [0116] only scans the medications and supplements (referred to as “MS” in Rast), and never discloses scanning the patient information from the packs or strings. While Rast discloses an RFID in paragraph [0116], this tag is embedded within tablets so they may be identified, and does not include patient information as alleged by the grounds of rejection.

Finally, Rast’s claim 22 fails to bridge the above deficiencies of Rast’s paragraph [0116]. Rast’s claim 22 refers to saving “information about said selections within a set of consumer information for subsequent use by said consumer.” When one looks to claim 18 from which claim 22 depends, it is clear that neither the selection information nor the consumer information

comes from scanned drugs or scanned strings. Furthermore, because the selection information is used to determine what is to be packed, it cannot possibly be scanned from the strings.

An image “of said packs and at least some of the patient data”

Applicant also submits that Sleep and Rast, individually and in combination, fail to disclose the recitations of “entering into memory ... the image of said packs and at least some of the patient data,” and “wherein said stored image is maintained as proof of the state of the packs at the time of inspection.” First, as shown above, neither Sleep nor Rast discloses scanning drugs in packs, and therefore they cannot possibly disclose entering an image of the packs into memory. Second, as was also shown above, any scanning performed in Sleep and Rast happens prior to any packaging, whereas the scanning of the present application takes place after drugs are entered in packs. As a result, assuming *arguendo* that Sleep and Rast perform optical scanning, any such scan cannot possibly be proof of the state of the packs.

Comparing “said scanned drug data with said input drug data”

The grounds of rejection allege that the step of “comparing said scanned drug data with said input drug data” is disclosed by Sleep’s paragraph [0063] where it states, “At station 40 the RF tag 36 is read and its data compared with the bar code printed on the label.” First, in contrast to Rast, Sleep’s RF tag contains customer specific information. Or, as stated in paragraph [0052], “Under control of FSC 14, flex filler 26 fills the bottles with the correct number of inspected tablets, and simultaneously writes the customer specific data to the puck’s RF Tag 46 ...” (emphasis added). When Sleep’s RF tag is compared to the barcode printed on the label, it is never comparing information acquired by scanning drugs, and instead compares the customer

specific data in the RF tag with the customer specific information provided to the labeler to ensure the bottle is correctly labeled, not correctly filled. Additionally, because claim 1 now requires that the drugs be scanned while in the packs, it is not possible for Sleep to disclose this recitation.

In view of the above, Applicant submits that claim 1 patentably distinguishes over the prior art. Applicant further submits that claims 15, 26 and 40 also patentably distinguish over the prior art for reasons analogous to those presented with regards to claim 1. Finally, Applicant submits that claims 2-9, 16-17, 27-34, 41, 42 and 51 also patentably distinguish over the prior art due *at least* to their dependence on claim 1.

Statement of Substance of Interview, December 3, 2009

Please review and enter the following remarks summarizing the interview conducted on December 3, 2009:

An Examiner's Interview Summary Record (PTO-413) was received dated December 10, 2009.

During the interview, the following was discussed:

1. Brief description of exhibits or demonstration: None
2. Identification of claims discussed: Claims 1 and 7
3. Identification of art discussed: Sleep and Rast
4. Identification of principal proposed amendments: None
5. Brief Identification of principal arguments: A memory was discussed to carry patient and drug information. Discussion of moving "wherein" clause into preamble.

6. Indication of other pertinent matters discussed: None.

7. Results of Interview: None.

It is respectfully submitted that the instant STATEMENT OF SUBSTANCE OF INTERVIEW complies with the requirements of 37 C.F.R. §§1.2 and 1.133 and MPEP §713.04.

Statement of Substance of Interview, January 6, 2010

Please review and enter the following remarks summarizing the interview conducted on January 6, 2010:

An Examiner's Interview Summary Record (PTO-413) was received dated January 6, 2010.

During the interview, the following was discussed:

1. Brief description of exhibits or demonstration: None
2. Identification of claims discussed: Claim 1.
3. Identification of art discussed: Sleep and Rast.
4. Identification of principal proposed amendments: None.
5. Brief Identification of principal arguments: Prior art fails to disclose scanning of drugs in packs, or scanning patient data from strings.

6. Indication of other pertinent matters discussed: None.

7. Results of Interview: None.

It is respectfully submitted that the instant STATEMENT OF SUBSTANCE OF INTERVIEW complies with the requirements of 37 C.F.R. §§1.2 and 1.133 and MPEP §713.04.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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CUSTOMER NUMBER

Date: March 1, 2010

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